

RUSSELL KILPATRICK ROADSIDE MENAGERIE DECISION DOCUMENT

May 9, 2003

Roadside Menagerie Application and MEPA Review

Montana Fish, Wildlife and Parks (FWP) received an application for a roadside menagerie license from Russell Kilpatrick on March 18, 2003 to operate a 15-acre roadside menagerie in Flathead County, Montana. The roadside menagerie is located approximately 1 mile north of Coram, Montana. While originally permitted for an 8-acre area, the menagerie now occupies an area of approximately 15 acres in Tracts 2, 3, and 3F of the NW1/4 SW1/4 of Section 21, T31N R19W. The permit application specifies that the menagerie would contain 5 black bears (*Ursus americanus*) and 5 brown bears (*Ursus arctos*).

Black bears and brown bears would be free to roam through various subunits within the menagerie. A perimeter fence consisting of 6 foot high wire mesh with an additional 2 feet of electrified elements at the top and electrified elements at the bottom surrounds the menagerie. Within the menagerie, low electrical fences (c.a., 3 feet high) are intended to restrict the bears to various areas of the menagerie. Visitors are able to travel through the menagerie in automobiles and view the free-ranging bears. One segment of the motor path has low electrical fences on either side intended to prevent bears from accessing vehicles. On this segment of the motor path visitors are able to roll down their car windows while observing bears. The applicant would live adjacent to the facility year-round.

FWP prepared a Draft Environmental Assessment (EA) pursuant to the Montana Environmental Policy Act (MEPA). This document was distributed for public review and comment on April 18, 2003, with comments accepted through May 6, 2003.

FWP received five public comment submittals (written and verbal) during the comment period. Issues raised include: an appreciation of the previous facility as a place where individuals could view bears in a semi-natural environment; an accusation that Mr. Kilpatrick is being harassed by FWP concerning operation of his facility; a lack of space for bears housed at the facility and concern for their well-being; concern for Mr. Kilpatrick's prior operation of the facility without a license and while not in compliance with state laws; public safety issues concerning traffic and advertising at the facility; and concerns that portions of the perimeter fence extend beyond Mr. Kilpatrick's property lines. These comments were collected and responses to specific issues prepared by FWP. A summary of the specific issues raised and resulting responses are included in the Final EA.

The EA evaluated four different alternatives for operation of the proposed roadside menagerie. Upon completion of the EA, it was determined that a full Environmental Impact Statement (EIS) would not be required for Alternatives B, C, or D. However, a full EIS would be required for Alternative A due to a finding of significant impacts that could not be mitigated to below the level of significance. A copy of the Final EA explaining the alternatives and the individual evaluation of each alternative is attached.

Proposed Decision:

Based upon review of the EA, the license application file, and the information noted below, FWP has determined that a license to operate the alternative livestock facility in question will be issued under alternative B, contingent upon agreement by the applicant to comply with the 12 stipulations listed below as well as the fencing requirements under Alternative B of the Kilpatrick roadside menagerie EA. The option of having this applicant agree to the 12 stipulations and fencing requirements was deemed an approved method of "drive-in" roadside menagerie regulation by the Lewis and Clark District Court Cause No BDV-93-637 and is re-adopted here. Changes from the approved alternative must be authorized by FWP prior to implementation of any changes. An original roadside menagerie license, issued in 1991 to Mr. Kilpatrick and in effect until 1999, also had been conditioned with 11 of the same stipulations.

The Licensee must be in compliance with all roadside menagerie statutes, rules and conditions applied to the license. Current regulations are attached for the applicant's information, but it is the Licensee's responsibility to keep up with any changes in the laws or regulations.

With most roadside menagerie facilities, there is a concern for public safety and for potential environmental effects on resident wildlife populations. The EA recommends additional mitigation measures, which should assist in reducing those concerns.

The proposed facility will exclude wildlife from using approximately 15 acres of habitat. Given the total size of the enclosure, the impact from the loss of habitat was not considered significant.

Any potential impacts on water quality not addressed herein can be mitigated by the applicant's compliance with the state's water quality standards and requirements. Point source discharges, which include operations qualifying as concentrated animal feeding operations, are regulated under Title 75, Chapter 5, Part 6, MCA and ARM 16.20.1301, et. seq., and may require permits, especially if animal numbers result in significant loss of vegetation. Nonpoint source discharges are regulated under the prohibitions against the pollution and nondegradation of state waters (Title 75, Chapter 5, Parts 3 and 6, MCA and ARM 16.20.701 et. seq.). Nonpoint sources of pollution are considered non-significant sources of degradation where reasonable land, soil, and water conservation practices are applied, and existing and anticipated beneficial uses will be fully protected (ARM 16.20.713). The Montana Department of Environmental Quality (DEQ) has the authority to determine whether an activity satisfies these standards (ARM 16.20.709).

Accumulation of packed snow, tree windthrow, and other factors may increase the risk of ingress and egress associated with this roadside menagerie facility. FWP requires the immediate notification of the ingress or egress of any wild or captive carnivore in order to assess the adequacy of fencing requirements. This should help to address problems early and may result in additional modifications to fence design.

The FWP has the duty under MEPA to conduct an additional environmental review if the action approved by the agency changes, subsequent to the agency's original approval, in a manner which has impacts substantially different from those which were reviewed in the original MEPA review (Ravalli County Fish and Game Association v. Montana Department of State Lands, 273 Mont. 371, 903 P.2d 1362 (1995)). For that reason, the Department provides notice that the

MEPA review performed for this license application reviewed the impacts of a roadside menagerie facility with up 5 black bears and 5 brown bears on 15 acres. To the extent that the applicant hereafter increases the number of species of animals or makes other significant changes to the operation, a supplemental MEPA review must be conducted.

License Stipulations:

1. All bears must be sterilized.
2. All bears must be tattooed with a unique code.
3. Food storage must be in odor-proof containers as per USDA APHIS rules.
4. A veterinary-care plan must be developed and implemented, including descriptions of specific vaccination schedules if implemented.
5. No road-killed ungulates may be in the feeding program.
6. All caging provisions of the roadside zoo and menagerie regulations apply for brown bears (12.6.1302). Caging requirements for the black bears are relaxed because cars are considered a portion of the enclosure.
7. Fencing requirements:
 - a. Backup fence energizer, 12-volt system, deep cycle battery.
 - b. Warning signs adequate to protect public if electrical fence system approached from outside of park.
8. Additional fencing requirements (in 1991 these were identified as recommendations):
 - a. Enhance existing fence per recommendations (as per memo from Mike Madel of 6/14/91), or
 - b. Develop outside perimeter fence and use trained dogs to minimize or prevent bear escapement or entry and human entry or injury.
9. Permit review – annually with revocation rights.
10. Escaped bears – owner liable for damage and/or expenses incurred in capturing escaped bears.
11. Report ingress of any wild bears or egress of captive bears to the Montana FWP immediately. The report must contain the probable reason why or how ingress/egress occurred.
12. Remove bear fecal matter on a daily basis. Collected fecal material should be stored odor-proof containers until removal from the site and disposed at a site isolated from surface water and groundwater. Disposal must meet county solid waste regulations.

Recommended Mitigation Measures:

The following list of recommended mitigation measures address minor impacts identified in the Kilpatrick roadside menagerie EA.

Land Resources

- Revegetate soils disturbed by construction activities or concentrated bear activity.
- Rotate the use of areas within the menagerie, allowing vegetation to recover in rested areas. Revegetate intensely used areas.

Air Resources

- To further reduce odors, areas with accumulations of urine may be treated with water and lime.

Vegetation Resources

- Monitor the proposed roadside menagerie site for invasion of noxious weeds and treat affected areas in a timely manner.
- Rotate bear utilization areas to allow for disturbed vegetation to recover
- Revegetate disturbed areas.

Wildlife Resources

- Current fencing may be inadequate to prevent ingress of wild bears or egress of captive bears. An additional electrified fence array, both interior and exterior to the perimeter fence is recommended. Such an array would consist of alternating hot and ground wires to a height of 48 inches. This design is used by MFWP to secure orchards and apiaries. MFWP can provide details of the design.
- Remove trees within 20 feet of the perimeter fence on either side of the enclosure and secure a 3/8-inch steel cable to the top of the fence to prevent excessive fence compression should a tree fall on it.
- Inspect fences on a regular basis and immediately after events likely to damage fences to ensure integrity.
- Store all trash in odor-proof containers.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Risk/Health Hazards

- Provide rabies vaccinations to those staff working closely with bears.
- Train staff to recognize symptoms of diseases to which bears are susceptible.
- Provide literature to visitors that describe the dangers of both wild and captive bears.

Cultural Resources

- Stop work in the area of any observed archeological artifact. Report discovery of historical objects to the Montana Historical Society in Helena.

Daniel P. Vincent
Regional Supervisor

Date

Russell Kilpatrick
License Applicant

Date

Please sign the document and return the original to FWP to indicate your concurrence with the license stipulations and recommended mitigation measures listed above. A copy of the signed decision will be provided to you for your records.